IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

WRIT PETITION (L) NO.67 OF 2007

Skyline Residency P.Ltd and anr. . ...Petitioners
vs.
The Municipal Corporation of
Greater Mumbai and Ors. ...Respondents

Mr.S.U.Kamdar, Sr.Counsel i/by.Purnanand & Co.
for the petitioners.
N.A.Shaikh for the respondents/BMC.

CORAM: S.C. DHARMADHIKARI, J.

23rd January, 2007.

P.C :-

1. Heard Mr.Kamdar appearing for the petitioners and Mr.Shaikh appearing for the respondents.

2. This petition can be disposed off at the admission stage itself.

3. Mr.Kamdar, appearing for the petitioners does not dispute that the respondents are required to implement a scheme framed by it and for that purpose widen and improve the sewerage system and comply with

other requirements in that behalf. He also does not dispute that if due process of law is followed, the respondents can start the work of widening of the nullah pursuant to the notice issued under Section 222 of the BMC Act. However, his apprehension is that while carrying out such works, the compound wall erected by the petitioner, if damage or required to be shifted shall be re-erected either by the respondents or if the petitioners are required to do so, the costs, charges and expenses pertaining to the same should be reimbursed.

4. The other apprehension is that while widening the nullah if any utilities are required to be shifted, then the concerned agencies/service providers would have to be duly intimated and only after they permit,the shifting should be undertaken. Similarly, for such shifting the costs, charges and expenses be paid by the Corporation directly to the Utility agency.

5. In other words, the petitioner shall not be responsible for either shifting or for paying any sums

in that behalf. An affidavit is filed of the Executive Engineer of the Respondents and in paragraph 4(e) and (f) this is what is stated :

> "4(e) The Petitioner has filed the present petition on the ground that utility laid in the plot will be affected by the widening of nullah. I say that the Architect of the Petitioner Mr.Manoj Daisaria was informed during site inspection that damages if any done to compound wall of the Petitioners holding and drainage system provided by the Petitioners will be rectified by the Corporation.
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> 4(f) I say that if any utilities are required to be shifted during the widening of the nullah then the shifting charge will be directly paid by the Respondents to the utility agencies such as Reliance Energy, MGL etc. on completion of shifting work.

6. In addition, Mr.Shaikh on taking instructions from Mr.Bhalerao, Executive Engineer/Depondent of the Affidavit, who is present in court, states that the Corporation will not insist upon the petitioners shifting the utilities (pipeline, cable etc.) of M/s.Reliance Energy and Mahanagar Gas Ltd. Mr.Bhalerao, states that these agencies would be duly intimated in case their installations are required to

be shifted and in due consultation and after discussion with them, the same will be shifted to the area/space earmarked for the same. The shifting charges which are required to be incurred would be paid directly by the respondents to these agencies and the petitioner would not be held in any manner responsible for payment of the same.

7. Needless to state that if the compound wall is also damaged/demolished and is required to be re-erected the respondents would do so at their own costs, charges and expenses so also if the drainage system and water lines, if required to be relaid the same would be relaid/rectified by the respondents at their cost. Mr.Shaikh, on instructions from Mr.Bhalerao, states that the respondents would not claim any sums for widening of the nullah from the petitioners.

8. In the light of the contention of the affidavit filed on behalf of the respondents and the statement/assurances given in court, the grievance of the petitioners stands redressed and nothing survives

in this petition and is accordingly disposed off.

sd/-

(S.C.DHARMADHIKARI,J)